

**FILED**

**JUN 14 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

RUTH H. WYATT, ESTATE OF, by and through ARTHUR H. WATSON, Personal Representative and Trustee of the Estate of Ruth H. Wyatt, deceased. Skagit County Probate #88-4-00305-0, for the benefit of Murray Scott Watson, Craig Douglas Watson, and Arthur Hammond; ARTHUR H. WATSON, Personal Representative and Trustee of the Estate of Ruth H. Wyatt, deceased,

Plaintiffs - Appellants,

v.

DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE; DOES, 1-10,

Defendants - Appellees.

No. 04-35939

D.C. No. CV-02-02244-JLR

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Western District of Washington  
James L. Robart, District Judge, Presiding  
Argued and Submitted June 6, 2006  
Seattle, Washington

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Before: TALLMAN and BYBEE, Circuit Judges, and HUFF\*\*, District Judge.

We affirm the district court's judgment in favor of the National Park Service following a bench trial. The term "minerals" is ambiguous as a matter of Washington law. *Kunkel v. Meridian Oil, Inc.*, 792 P.2d 1254, 1256 (Wash. 1990) (en banc). Therefore, courts are required to look at the language in the reservation, the surrounding circumstances, and the intent of the grantor when attempting to ascertain the meaning of the term "minerals" when used in any grant or reservation. *Id.* at 1257. The district court's factual findings were not clearly erroneous, *see id.*, and the district court properly concluded that the term "minerals," as used in the 1928 deed, did not include sand or gravel. *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1156 (9th Cir. 2006) (stating that conclusions of law are reviewed de novo).

Wyatt's complaint was limited to establishing ownership over sand and gravel. Whether Wyatt's mineral reservation includes the right to engage in placer mining is a separate issue. The district court therefore properly declined to rule on that claim.

**AFFIRMED.**

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\*\* The Honorable Marilyn L. Huff, United States District Judge for the Southern District of California, sitting by designation.